



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 11, 1998

Ms. Tina Plummer  
Texas Department of Mental Health  
and Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-2668

OR98-3070

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120383.

The Department of Mental Health and Mental Retardation (the "Department") received a request for information relating to an employee at one of the Department's facilities. You submit information responsive to the request which you seek to withhold under sections 552.103 and 552.101 of the Government Code.

Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

You advise that the requestor here has filed suit against the department in connection with the termination of his employment at the facility to which the requested information relates. You provide a copy of the Plaintiff's Original Petition in that lawsuit. Having reviewed the information at issue, your arguments for withholding it, and the above-mentioned petition, we conclude that the requested information relates to the pending

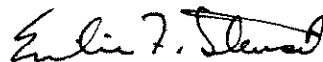
litigation. Accordingly, you may withhold the submitted information under section 552.103(a) at this time.<sup>1</sup>

We note, however, that the plaintiff in this litigation, who is also the requestor, has previously had access to some of the records at issue. Generally, once the opposing parties in the litigation have seen or had access to any of the requested information, there would be no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Thus, if the document at issue has previously been seen by all opposing parties to the litigation, the document must be released to the requestor. If the document at issue has not previously been seen by all opposing parties to the litigation, the document may be withheld. The applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We also note, however, that some of the requested information is confidential by law and must not be released even if the opposing parties to the litigation have seen it or after litigation has concluded. If you receive a subsequent request for the information, you should re-assert your arguments against disclosure at that time. Gov't Code § 552.352 (distribution of confidential information is criminal offense)

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS/nc

Ref.: ID # 120383

Enclosures: Submitted documents

cc: Mr. John Womble  
P.O. Box 1669  
Big Spring, Texas 79721

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<sup>1</sup>We do not address the exceptions that you raise under section 552.101 because you may withhold the requested information under section 552.103.